

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-15723

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
September 5, 2007
THOMAS K. KAHN
CLERK

D. C. Docket Nos.
06-60299-CV-CMA
95-24079-BKC-JK

In Re: LINDA JANE GAUL,

Debtor,

DWIGHT H. MATLACK,
LINDA MCVEIGH MATLACK,

Plaintiffs-Appellants,

versus

LINDA JANE GAUL,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(September 5, 2007)

Before DUBINA and MARCUS, Circuit Judges, and PROCTOR,* District Judge.

PER CURIAM:

This is an appeal from the district court's judgment affirming the bankruptcy court's order denying the Matlack's request for relief from stay. The basis of the bankruptcy court's ruling was that the settlement agreement between the parties was an executory contract since the debtor's obligation included a possible payment to the Matlacks of the sum of \$200,000 and was not merely an obligation to transfer property to them. The district court entered a well-reasoned order affirming the bankruptcy court's order but held that both the settlement agreement and the underlying contract were executory. The Matlacks then perfected this appeal.

We review factual findings under a clearly erroneous standard and conclusions of law *de novo*. *In Re: Bilzerian*, 153 F.3d 1278, 1281 (11th Cir. 1998).

After reviewing the record and reading the parties' briefs, we agree with the district court's finding that both the settlement agreement and the terms of the contract were executory. We also reject the Matlack's contention that the

*Honorable R. David Proctor, Judge, United States District Court for the Northern District of Alabama, sitting by designation.

bankruptcy court rendered an “advisory opinion” or otherwise deprived the Matlacks of due process. Likewise, we reject the Matlack’s claim for judicial estoppel as they have failed to demonstrate the existence of any perversion of justice.

Finally, we agree with the district court’s finding that the Matlacks waived their “bad faith” argument since they failed to present that argument to the bankruptcy court.

For the above-stated reasons, we affirm the district court’s judgment affirming the bankruptcy court’s order.

AFFIRMED.